HOUSE BILL 2906

By Harwell

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 21, relative to job tax credit for small businesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 21, is amended by adding the following as a new section:

§ 67-4-2122.

(a) As used in this section, unless the context requires otherwise:

(1) "Average occupational wage" means the average wage for all industries as reported by the department of labor and workforce development in the most recent annual quarterly census of employment and wages super sector data for the state, aggregate of all ownerships;

(2) "Base employment" means:

(A) For the initial year for which credits are claimed, the number of full-time employees employed on December 31 of the base year; and

(B) For subsequent years, the greater of:

(i) The number of full-time employees employed on December 31 of the base year plus each eligible position for which a credit has been claimed this section; or

(ii) The number of full-time employees employed on December 31 of the prior year;

(3) "Base year" means the later of the first full year of operation of a small business or the year that begins on or after January 1, 2009, and before January 1, 2010;

(4) "Department" means the department of revenue;

(5) "Eligible position" means each newly created position that:

(A) Is filled by a full-time employee and that increases the total employment of the small business above its base employment; provided, however, that a position will be deemed filled if it subsequently becomes vacant for any reason but is refilled within thirty (30) days; and

(B) Carries a base hourly wage of at least seventy-five percent (75%) of the state's average occupational wage in the county or the metropolitan statistical area in which the taxpayer is located, whichever is higher, for the month of January of the year in which the full-time employee positions are created. In no case shall the base hourly wage be less than one hundred fifty percent (150%) of the federal minimum wage;

(6) "Full-time employee" means a person employed in a permanent, rather than seasonal or part-time, employment position, and is employed for at least twelve (12) consecutive months at least thirty-seven and one half (37.5) hours per week, if that person is enrolled in minimal health care benefits, as described in title 56, chapter 7, part 22;

(7) "Investment period" means the period during which eligible positions are created as a result of the required investment; provided,

however, that the period shall not exceed three (3) years from the effective date of the business plan;

(8) "Qualified small business" means a small business where the taxpayer has made the minimum investment of five thousand dollars ($5,000) in qualified tangible personal property and created at least one (1) eligible position during the investment period;

(9) "Qualified tangible personal property" means equipment or technology or both that is used primarily in the small business and purchased during the investment period. Technology may include, but is not limited to, computer software, computers, computer networks, computer systems, peripheral devices, and hardware; and

(10) "Small business" means any business entity organized for profit, including a limited partnership, corporation, limited liability company, joint venture, association, or cooperative, that employs an average of at least one (1) but no more than twenty-five (25) full-time employees on business days during the preceding calendar year and who employs at least one (1) employee on the first day of the tax year.

(b) The commissioner of revenue shall develop a small business development credit program in consultation with the commissioner of economic and community development to assist new or existing small businesses. Subject to the requirements set forth in this section, there shall be allowed to any qualified small business that makes the required investment a credit, the amount of which shall be determined by the commissioner of revenue and set by rule, for each eligible position created during the investment period. The credit shall apply against the franchise tax imposed by this part and the excise tax imposed by part 20 of this chapter; provided, however, that the credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed one hundred percent (100%) of the combined franchise and excise tax liability shown on the return. If a taxpayer is entitled to more than one (1) of the tax credits allowed against the franchise tax imposed by this part and the excise tax imposed by part 20 of this chapter, the priority of application and use of the credits shall be as determined by the commissioner.

(c)

(1) The commissioner of revenue shall determine the terms, conditions, and requirements for application for the credit, in consultation with the commissioner of economic and community development, subject to the provisions of this subdivision. The application and business plan shall be submitted in the manner prescribed by the commissioner of revenue and shall demonstrate that the requirements of the law will be met.

(2) A taxpayer seeking this credit shall first submit to the commissioner of revenue an application together with a business plan describing the:

(A) Investment to be made;

(B) Calculation of the base employment of the small business for each year from fiscal year 2011-2012 and forward;

(C) Number of eligible positions the investment will create;

(D) Expected dates the jobs will be filled; and

(E) Effective date of the business plan.

(3) Documentation verifying that the minimum investment of five thousand dollars ($5,000) in qualified tangible personal property has been met and that eligible positions have been created and filled shall include, but are not limited to, employment and wage records, invoices, bills of lading, contracts, and all other pertinent records and schedules as required by the commissioner of revenue.

(d) In order to qualify for the credit, the qualified small business shall, within twelve (12) months of the effective date of the business plan:

(1) Create and fill one (1) or more eligible positions over the base employment; and

(2) Invest five thousand dollars ($5,000) or more in qualified tangible personal property.

(e) After approval of an application and business plan, the commissioner of revenue shall notify the taxpayer of the approved tax credit amount. The taxpayer may not take the credit until the commissioner of revenue has notified the taxpayer of the amount approved. The credit may only be taken by the taxpayer establishing the qualified small business. The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars ($25,000). The credit shall be claimed on the tax return for the year during which the credit was approved.

(f) The credits permitted under this section shall be allowed only under the following conditions:

(1) Applications submitted as complete to the department for the credit shall be evaluated in the order that the applications are received;

(2) For each application approved for credit, it shall be assumed that the credit will be twenty-five thousand dollars ($25,000) for the fiscal year in which the application is approved and the ensuing two (2) fiscal years for purposes of limiting credits as set forth in subdivision (f)(3);

(3) Applications shall be limited to those that would result in no greater credit in any fiscal year than three million dollars ($3,000,000) based upon the assumption set forth in subdivision (f)(2). The maximum amount of credits that may be committed in each fiscal year by the department shall be capped at three million dollars ($3,000,000). Applications that are not approved for any fiscal year shall not be carried forward for consideration in any subsequent year;

(4) By no later than February 1 of each year, the commissioner of revenue shall inform the commissioner of finance and administration of the amount of credits approved for the prior fiscal year; and

(5) Any unused credit for a taxpayer may be carried forward in any tax period until the credit is taken; provided, however, that the credit may not be carried forward for more than five (5) years.

(g) By no later than July 1 of each year, the commissioner of economic and community development, in consultation with the commissioner of revenue, shall make a determination of the tangible impact and value the program has achieved in assisting new or existing small businesses and in promoting emerging occupations or jobs in this state.

SECTION 2. This act shall take effect January 1, 2011, the public welfare requiring it.